

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD A. BROOKS and TENNESSEE VALLEY AUTHORITY,
CHEROKEE DAM, Jefferson City, TN

*Docket No. 01-1327; Oral Argument Held December 16, 2002;
Issued February 25, 2003*

Appearances: *Arthur M. Fowler, Esq.*, for appellant; *Jim C. Gordon, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.¹

On December 22, 1994 appellant, then a retired public safety officer,² filed an occupational disease claim, alleging that factors of employment caused stress and psychological trauma. He specifically alleged that job stress led to a heart condition, sexual dysfunction and post-traumatic stress, noting that he had been harassed by his supervisor, Conley A. Ownby. He further alleged that an investigation in March 1994, contributed to his condition and that he was fearful of the future. In support of his claim, appellant submitted medical evidence covering the years 1989 to 1994. The employing establishment submitted, *inter alia*, several medical reports, copies of performance appraisals and a job description.

By decision dated April 7, 1995, the Office of Workers' Compensation Programs denied the claim, finding that appellant failed to establish that he sustained an emotional condition in the performance of duty. On July 5, 1995 appellant, through his attorney, requested reconsideration and submitted additional evidence, including statements from friends and a personal statement, in which he again alleged that he had been harassed by Mr. Ownby. Appellant further described the March 1994 incident that led to the investigation. By decision dated August 16, 1995, the Office denied appellant's reconsideration request, finding the evidence submitted repetitious or irrelevant.

¹ The Board notes that Michael J. Walsh, who participated in the oral argument on December 16, 2002 was not Chairman of the Board after January 10, 2003, as his appointment expired, and did not participate in preparation of this decision.

² Appellant had been granted an early-out incentive and retired effective October 14, 1994.

On March 8, 1996 appellant filed an appeal with the Board that was dismissed, at his request, by order dated March 22, 1996.³ On January 6, 1997 appellant, through his attorney, again requested reconsideration with the Office and submitted additional evidence, including statements and what was purported to be a diary of Mr. Ownby's. By decision dated April 24, 1998, the Office denied modification of the prior decision. On June 16, 1998 appellant, through counsel, filed an appeal with the Board and requested oral argument. By order dated October 3, 2000, the Board granted the Director's motion to remand the case to the Office and cancelled oral argument.⁴ On November 8, 2000 appellant, again through his attorney, requested reconsideration and submitted additional medical evidence. By decision dated March 15, 2001, the Office again found that appellant had not sustained an emotional condition in the performance of duty. The instant appeal follows.

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury in the performance of duty.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁷ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁸ When an employee experiences emotional stress in carrying out his employment duties, or has fear and anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁹

³ Docket No. 96-1040.

⁴ Docket No. 98-2042.

⁵ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁹ *Lillian Cutler*, *supra* note 6.

Regarding appellant's allegation that the spring 1994 investigation caused his condition, the Board has long held that investigations are an administrative function of the employing establishment and thus, do not involve an employee's regularly or specially assigned employment duties.¹⁰ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹

In the instant case, although appellant has made allegations that the employing establishment erred and acted abusively in conducting its March 1994 investigation, appellant has not provided sufficient evidence to support such a claim. A review of the evidence of record shows that he has not shown that the employing establishment's actions in connection with its investigation of him were unreasonable. The employing establishment advised that the investigation was performed as a result of a complaint received March 4, 1994, which alleged that appellant, while in uniform, threatened the life of an individual. The employing establishment further indicated that, as a result of the investigation, appellant underwent psychological evaluation and based on the opinions of several psychologists, was removed from duty as a public safety officer. The Board finds that it was reasonable for the employing establishment to investigate the complaint and appellant, therefore, has not established a compensable employment factor under the Act in this regard.

Appellant has also alleged that harassment and discrimination on the part of his supervisor, Mr. Ownby, contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹² However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹³

Here, the employing establishment denied that appellant was subjected to harassment or discrimination and while appellant submitted a number of statements regarding Mr. Ownby's remarks regarding appellant, the Board finds that none of the statements contain specific descriptions of actions demonstrating harassment by Mr. Ownby that rise to the standard required under the Act. The statement of David and Lora Duvall is nonprobative as it is general in nature. Likewise, Larry Trent's statement indicates that he merely spoke with Mr. Ownby after appellant's retirement. The Board further finds the comments of Mr. Ownby's former wife, Wanda R. Ownby and appellant's wife, Linda J. Brooks, to be of decreased probative value. While Joyce Shults advised that Mr. Ownby made comments to her regarding appellant and that

¹⁰ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

¹¹ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹² *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

she witnessed actions that she characterized as harassment, it is unclear from the record whether she was a coworker and the Board finds that, even with her characterization, Mr. Ownby was appellant's supervisor and as such, was entitled to oversee appellant's workday. C. Edward Bales and Ronnie C. Blocker provided statements, in which they indicated that they overheard negative comments made by Mr. Ownby and others concerning appellant. These, however, are also of a general nature and, therefore, are also insufficient to establish harassment on the part of the employing establishment. The Board thus finds as the witness statements lack specific detail to establish error or abuse, these statements are insufficient to carry appellant's burden of proof in establishing that he was harassed at work by Mr. Ownby.¹⁴

Lastly, regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has long held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.¹⁵

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹⁶

The March 15, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 25, 2003

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ See *Christophe Jolicoeur*, 49 ECAB 553 (1998).

¹⁵ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹⁶ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).